

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HOWARD D. NELSON,

Plaintiff,

v.

MICHAEL J. ASTRUE, Commissioner,
Social Security Administration,

Defendant.

Case No. C06-1464RSL

ORDER DISMISSING CASE

The Court, having reviewed the Report and Recommendation (Dkt. #15) of the Honorable James P. Donohue, United States Magistrate Judge, plaintiff's objections to the Report and Recommendation (Dkt. #16), defendant's response to plaintiff's objections (Dkt. #17), and the remainder of the record, hereby finds and orders as follows:

- (1) The Court adopts the Report and Recommendation.
- (2) The Court rejects, as without merit, the following issues raised by plaintiff's objections to the Report and Recommendation:
 - (a) The Court finds no improper deference to the Commissioner's interpretation of Ninth Circuit precedent. Rather, Judge Donohue conducted his own independent analysis of Chavez v. Bowen, 844 F.2d 691 (9th Cir. 1988) and concluded that its holding does not extend to applying a binding determination of disability retrospectively. See Dkt. #15 at 9-10.

As Judge Donohue concluded in the Report and Recommendation, plaintiff's contrary interpretation of Chavez is not supported by Supreme Court or Ninth Circuit precedent. See Dkt. #15 at 8.

- (b) Plaintiff's contention that Judge Donohue failed to apply issue preclusion when it would favor plaintiff is directly contradicted by the Report and Recommendation. Specifically, Judge Donohue stated that the continuing presumption doctrine, the aspect of the issue preclusion at bar, "does not favor the Commissioner alone; it may also apply to previous findings of disability, forcing the Commissioner to produce evidence of medical improvement sufficient to rebut the presumption." See Dkt. #15 at 8.
- (c) The Court finds that Judge Donohue properly affirmed Administrative Law Judge ("ALJ") Nichols' rejection of the opinions of two treating physicians. The Court finds that the Report and Recommendation was based on the same evidence and conclusions as ALJ Nichols' opinion, not upon "post-hoc rationalizations" as plaintiff contends. See Dkt. #16 at 7.
- (d) The Report and Recommendation properly affirmed ALJ Nichols' finding that plaintiff was not credible. Plaintiff's alternative interpretation of the evidence is insufficient to overturn ALJ Nichols' rational conclusions. "Where evidence is susceptible to more than one rational interpretation, it is the ALJ's conclusion that must be upheld." Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005) (citing Andrews v. Shalala, 53 F.3d 1035, 1039-40 (9th Cir. 1995)).
- (3) The final decision of the Commissioner is **AFFIRMED**, and this action is **DISMISSED** with prejudice.
- (4) The Clerk shall send a copy of this Order to the parties and to the Honorable James P. Donohue.

1 DATED this 17th day of December, 2007.

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4 Robert S. Lasnik
5 United States District Judge
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